

Accessibility to Higher education institutions across Europe

A prerequisite for the right to education on an equal basis

Note for case *Răzvan Mihai Gherghina against Romania*

In the Grand Chamber of the European Court of Human Rights

Application n° 42219/07

*We depend on the Law
and the Law depends on us¹*

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¹ 2006-2007 Report of the Maltese *National Commission Persons with Disability* on the application of the *Equality Opportunities (Persons with Disability) Act*, p.1, available at: <http://www.knpd.org/pubs/pdf/earpt07e.pdf>

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1. Several member States of the Council of Europe (“States Parties”) have already adopted measures on accessibility in various sectors (education, transport etc.) in order to enable full and effective participation to persons with disabilities in society on an equal basis with others. This note will focus primarily on the analysis of the legal and policy measures taken by some States Parties³ to ensure physical accessibility to the built environment housing Higher education institutions. Country reports by the *European network of Legal experts in the non-discrimination field*⁴ and the *Academic network of European Disability experts (ANED)*⁵ have been very helpful sources of information for this research.

2. The note aims at understanding how the questions raised by the case *Gherghina against Romania* are answered in other States Parties than Romania. Do Universities (or in general higher education institutions) are under the duty to make their physical environment accessible? If yes, under which conditions? In this vein, the note will first (I) analyse implementation measures for ensuring accessibility to the built environment and then (II) identify available legal remedies under national Law against lack of accessibility to allow efficient justifiability for the corresponding duty.

I. Implementation measures to ensure physical accessibility at University

3. Implementation measures comprise the duty to make the physical environment accessible (A) by way of anticipation or (B) in individualised situation of inaccessibility and (C) steps on the ground.

A. The duty to make University accessible by way of anticipation

4. This part aims at showing that accessibility is imposed regardless of any accessibility request and even if the education provider is not aware that an enrolled student has a disability. This anticipatory duty is implemented either immediately or progressively.

1) Immediately applicable duty to provide accessibility

5. Since the *Disability Discrimination Act* (1995), now replaced by the *Equality Act* of 2010 (“The Equality Act”), **UK Law** imposes a duty to provide accessibility for people with disabilities through the concept of “duty to make adjustments” (Section 20)⁶. This duty is imposed subject to the test of “reasonableness” and by way of anticipation (*ex ante*). It has a broad field of application including the sector of education⁷. Schedule 13 of the *Equality Act* makes clear that “further or higher education

³ Mentioned States Parties reflecting best practices are the UK, France, Ireland, Bulgaria, Norway, Austria, Malta, Slovakia, and Lithuania. This selection is by no means exhaustive. They reflect different legal systems, are located in different parts of the European Continent and have different social and economic conditions. In spite of that, they show convergence on the duty to provide accessibility to buildings housing Higher education institutions.

⁴ See the website of the European network of Legal experts in the non-discrimination field: <http://www.nondiscrimination.net/>

⁵ See the website of the Academic network of European Disability experts: <http://www.disability-europe.net/>

⁶ *Equality Act* 2010 (“Equality Act”), Sections 20 and Schedule 2. For the complete text of the Equality Act, see at: http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf

⁷ Also “Services and Public functions”, “Premises”, “Work” and “Associations”, see Section 20, (13) with column of the *Equality Act*.

institutions⁸ must comply with the duty to make adjustments⁹. In the education sector, the anticipatory duty applies broadly as it covers not only the provision of education but also the access to a benefit, facility or service¹⁰. Therefore, facilities allowing access to educational materials (libraries, learning and information centres), student life activities (leisure, sport facilities etc.) and student services are also covered¹¹.

6. Under the *Equality Act*, the duty to make adjustments implies the obligation “*where a physical feature puts a disabled person at a substantial disadvantage¹² in relation to a relevant matter in comparison with other persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage*”¹³. This provision is noteworthy in two respects. First, “physical feature” herein mentioned is defined broadly enough¹⁴ to cover any feature (e.g. stairs) of the access to University buildings (building entrances and exits), its classrooms (steps, stairways etc.) and sanitary conveniences¹⁵. Second, anticipation undoubtedly implies positive steps to avoid the disadvantage of inaccessibility such as removing the physical feature in question, altering it (e.g. by installing a ramp for stairs) or providing a reasonable means of avoiding it (e.g. by installing a lift)¹⁶.

7. As mentioned above, the duty to make adjustments is subject to the qualifier of “reasonableness”. *Consideration* and *action* are key elements in this assessment. First, balancing a person’s needs with a handful of factors must be done with careful consideration. These factors include practicability, financial costs; resources of the education provider and the availability of financial or other assistance (external funding)¹⁷. Second, the duty also requires action. It is true that the best adjustment for the concerned person (e.g. accessibility for wheelchair users) cannot always be put in place. Indeed, installing a lift may be objectively too costly for the concerned University. In this respect, one adjustment may be privileged over another without any breach of the Law. But the less costly option may still breach the duty if it amounts to a substantial disadvantage. The policy of providing distance learning courses instead of making the learning environment accessible would certainly not be considered “reasonable” under UK Law. In the case where an adjustment is put in place, action taken must comply with the duty to make

⁸ Unquestionably, Universities are covered by this expression, irrespective of their status (public or private), see Section 91, §§ 9 to 11 of the *Equality Act*.

⁹ See Schedule 13, § 3, (2), to be read in conjunction with Section 20 of the *Equality Act*.

¹⁰ Schedule 13, § 3, (4), *Equality Act*.

¹¹ *Technical Guidance on Further and Higher Education*, 2012 (“The Guidance”), § 10.25. The Guidance has been prepared and issued by the Equality and Human rights Commission as foreseen by Section 13 of the *Equality Act* 2006. This Commission is empowered by the *Equality Act* 2006 to promote equality of opportunity, enforce the equality enactments and monitor the effectiveness of the equality and human rights enactments (see Section 8 and Section 11 of *Equality Act* 2006). The Guidance aims at setting out the *Equality Act*’s requirements on education providers for them to “*understand the law in depth, or apply it in practice*” (see p. 11) and can be used as evidence in legal proceedings (see §§ 1.5, 1.10 and 1.12). The Guidance available at: http://www.equalityhumanrights.com/sites/default/files/uploads/documents/Old_Guidance/PDFS/Technical_Guidance/Schools/technical_guidance_on_further_and_higher_education.pdf

¹² Under the *Equality Act*, “substantial” means more than minor or trivial see Section 212 (1) of the *Equality Act*. It is clear that lack of accessibility amounts to such a disadvantage under UK Law.

¹³ Section 20, § 4, *Equality Act*.

¹⁴ See Section 20, § 10, *Equality Act*.

¹⁵ *Idem*.

¹⁶ Section 20, § 9, (a), (b) and (c), *Equality Act*.

¹⁷ The Guidance, § 7.61.

adjustments¹⁸. However, an adjustment would not be acceptable if it provides “little benefit” to the student in reducing the disadvantage experienced by the student with disabilities¹⁹. The Equality and Human rights Commission²⁰ gives an illustrative example of an unacceptable adjustment to a wheelchair user who cannot access to a course’s classes that take place on a higher floor level. Asking him/her to change to a different course than the original one²¹ would be an unacceptable adjustment. Indeed, this “step would not be effective in preventing the disadvantage experienced in relation to the course the wheelchair user has chosen to undertake”. On the contrary, relocating the original course to an accessible would be the acceptable adjustment. In Mr Ghergina’s situation, the “adjustment” was worse than bringing “little benefit” as he was offered distance-learning, excluding him from mainstream education and social interaction at University.

8. In **Norway**, the concept of general accessibility/accommodation (“universal design”) enshrined in the *Anti-Discrimination and Accessibility Act on Prohibition against discrimination on the basis of disability*²² implies active and targeted efforts. It imposes accessibility by way of anticipation²³ and is therefore distinguished from the duty to provide individualised adjustment²⁴. In line with this, the *Act relating to Universities and University colleges* reads: “premises, access roads, sanitary facilities and technical installations are designed in such a way as to enable persons with disabilities to study at the University”²⁵.

9. **Lithuania**²⁶ and **Slovakia**²⁷ and **Bulgaria**²⁸ also impose the duty of accessibility by way of anticipation.

2) Progressive implementation of the duty to provide accessibility

10. French and Irish legislators have opted for a gradual implementation of the duty to accessibility.

11. In **France**, *Law for equal rights and equal opportunities, participation and citizenship of persons with disabilities* (“Law of 2005”)²⁹ sets up a timeframe to implement the duty of accessibility imposed on

¹⁸ The Guidance, § 7.25.

¹⁹ The Guidance, § 7.62.

²⁰ See for some of this Commission’s roles, note 11 above.

²¹ Installing a lift should be the appropriate adjustment but the Equality and Human Rights Commission specifies that in that particular case, it would not be reasonable for the education provider (suggesting because of a lack of resources), see the Guidance, § 7.62.

²² *Lov om forbud mot diskriminering på grunn av nedsatt funksjonsevne (diskriminerings-og tilgjengelighetsloven)*, available (in Norwegian) at: <http://lovdata.no/dokument/LTI/lov/2008-06-20-42>.

²³ See § 9: “Plikt til generell tilrettelegging (“universell utforming”).

²⁴ *Idem*, § 12, “Plikt til individuell tilrettelegging”.

²⁵ *Lov om universitet og høyskoler*, § 4-3, (g), available (in Norwegian) at: <http://lovdata.no/dokument/NL/lov/2005-04-01-15>.

²⁶ Art. 11, *Law on the Social Integration of Persons with Disabilities/Neįgalųjų socialinės integracijos įstatymas*, *Official Gazette/Valstybės žinios*, 2004, Nr. 83-2983, available (in Lithuanian) at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=330987

²⁷ § 100 of *Higher Education Act 131-2002* obliges Universities to “create appropriate conditions”, available (in Slovakian): <http://www.minedu.sk/data/att/5689.rtf>

²⁸ *Integration of Persons with Disabilities Act*, (available, in Bulgarian at: <http://lex.bg/bg/laws/ldoc/2135491478>) obliges public bodies to create disability-accessible architectural environments (see art. 33-34, 36 and 38)

²⁹ *Loi n° 2005-102 pour l’égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées*, *Official Journal* n°36, 12 February 2005, page 2353; full text of the Law available at:

establishments receiving public (“établissements recevant du public”)³⁰ and publicly-opened fittings (“installations ouvertes au public”)³¹ as well as on all the “mobility chain” i.e. the built environment, public spaces accommodations, transport systems (also important for access to education)³². The deadline to make the necessary changes is not the same for all accessibility duty-bearers. The latest scheduled by the Law of 2005 is 1st January 2015³³. However, it has been advanced by four years (previously 31st December 2010)³⁴ for “parts of establishments categorised as hosting public in buildings housing Higher education institutions and owned by the State”³⁵. As soon as the implementation deadline will be met, the duty of accessibility under French Law shall work in the same way than under the anticipatory duty enshrined in UK Law. At School and Higher education level, accessibility is also imposed by way of anticipation to exam conditions. A Circular issued by the Minister of Education (2011)³⁶ and addressed to Higher education establishments’ High authorities is meant to interpret provisions of the *Code of Education*³⁷. On the basis of the *Building and Housing Code*, the Circular recalls that the organising body of examination must ensure accessibility to the exam room³⁸ (which logically includes sanitary conveniences³⁹) irrespective of any request. The student with disability shall, in principle, be able to take the exam in the same room as his/her peers. Correlatively, installing him/her in a room apart is the exception⁴⁰, foreseen only where the principle cannot be applied. Two situations are mentioned; where impossibility is due to (i) use of machines or (ii) human help⁴¹. The *Guide on support to students with disabilities at University* (2012)⁴² authored by the *Universities’ Presidents Conference*⁴³ reinforces the view that accessibility is in principle anticipatory and exceptionally reactive⁴⁴.

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000809647&dateTexte=&categorieLien=id>

³⁰ Broadly defined as all buildings and premises in which persons are admitted, whether on payment or not, or where meetings are held, upon invitation, whether on payment or not. This is defined irrespective of their public or private legal status, see art. R.123-2, *Code de construction et de l’habitation* (“CCH”), Code’s text is available at: <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006074096>

³¹ Art. 41 of *Law of 2005* now codified in art. L. 111-7 CCH.

³² Art. 45, I. of the *Law of 2005*.

³³ Art. L.111-7-3 CCH.

³⁴ Art. 14, § 2, Decree n° 2006-555 of 17 may 2006 provides that art. R.111-19-8, II, a), CCH, must be complied with before 31st December 2010. This provision imposes itself to respect art. R. 111-19-2 of CCH, provision specifying what the accessibility duty concretely requires. See art. R.111-19-8 and art. R. 111-19-2, CCH. For the full version of the Decree n°2006-555, see: <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000819417&categorieLien=id>

³⁵ According to the Decree wording: « parties classées en établissement recevant du public des bâtiments accueillant des établissements d’enseignement supérieur et appartenant à l’Etat ».

³⁶ Circular n° 2011-220, 27 December 2011, (“Circular”), « Examens et concours de l’enseignement scolaire et de l’enseignement supérieur, Organisation pour les candidats présentant un handicap », see: http://www.education.gouv.fr/pid25535/bulletin_officiel.html?cid_bo=58803

³⁷ *Code of Education*, art. L. 111-19-2, available at: <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071191>

³⁸ See Circular n° 2011-220, Part IV, 1), referring to Art. L. 111-7 to L. 111-7-3, CCH.

³⁹ *Circular n° 2011-220*, in Part IV, 1)

⁴⁰ *Idem*, Part IV, 1) and 2)

⁴¹ *Idem*, Part IV, 2)

⁴² *Conférence des Présidents d’université*, « Guide de l’accompagnement de l’étudiant handicapé à l’université » (“The Guide”), 2012, see: http://ri.univ-pau.fr/live/digitalAssets/121/121671_guide-handicap-2012.pdf

⁴³ Association recognised of public interest gathering Universities’ and Higher education and Research establishments’ executive Directors (*Dirigeants exécutifs*). For more information, see its website: <http://www.cpu.fr/presentation/un-role-defendre-et-promouvoir-luniversite-francaise/>

⁴⁴ The Guide, p. 55.

12. The **Irish Disability Act 2005** (“*The Disability Act*”)⁴⁵ imposes accessibility by way of anticipation on public bodies in relation to the built environment and services. Practice evidences that Higher education institutions fall under the remit of “Public bodies”⁴⁶. Firstly, the National Disability Authority, independent advising body of the Minister for Justice, Equality and Law Reform for monitoring the implementation of the *Disability Act*⁴⁷, mentions Universities as an example of a public body⁴⁸. Secondly, the Irish Ombudsman presents Irish Universities⁴⁹ as public bodies under the duty of accessibility imposed by Section M of the *Building Regulations* (1997)⁵⁰. Yet, this particular provision enshrines the obligation to provide access. Referred to by the *Disability Act*⁵¹, it imposes that: “reasonable provision shall be made to enable disabled people to have safe and independent access to a building and to those parts of the building to which it [i]s appropriate to have access”⁵². Logically, sanitary conveniences are also covered⁵³. As in French Law, Universities shall make their buildings accessible within a certain timeframe (31st December 2015 at the latest)⁵⁴. The *Disability Act* foresees limited exceptions. Cost considerations can waive the duty to provide accessibility⁵⁵. Provision of services is the second context where anticipatory obligation is imposed on public bodies. Under Section 26 of the *Disability Act*, they must “ensure that the provision of access to the service⁵⁶ by persons with and persons without disabilities is integrated”⁵⁷ where “practicable and appropriate”. Again, practicability suggests that this duty can be waived on cost grounds⁵⁸. As part of its responsibilities to support public organisations in complying with the *Disability Act*, the National Disability Authority highlights that Section 26 implies (i) analysing whether persons with disabilities can access and use those services as everyone else and (ii) create an action plan to deal with issues that have been identified (checking premises for access and develop a plan to improve it)⁵⁹.

⁴⁵ *Disability Act 2005*, Number 14 of 2005, available at: <http://www.irishstatutebook.ie/2005/en/act/pub/0014/>

⁴⁶ Defined in Section 2, § 1, (a) of the *Disability Act*.

⁴⁷ See *National Disability Authority Act 1999*, Section 8, § 1.

⁴⁸ Giving example of Good practice of Public Bodies in the implementation of Section 26 of the *Disability Act* obliging public bodies to make their services available, it mentions the University of Limerick, see the Code of Practice (“*Code of Practice*”): “Accessibility of Public Services and Information provided by Public Bodies”, p. 14, available at: [http://www.nda.ie/cntmgmtnew.nsf/0/3DB134DF72E1846A8025710F0040BF3D/\\$File/COPPLain.pdf](http://www.nda.ie/cntmgmtnew.nsf/0/3DB134DF72E1846A8025710F0040BF3D/$File/COPPLain.pdf). This Code has been prepared and submitted by the National Disability Authority for the Minister for Justice, Equality and Law Reform as foreseen by Section 30, § 1 of the *Disability Act*. For its status, see on its p. 12.

⁴⁹ For example, University College Dublin, NUI Galway, NUI Maynooth, University College Cork, Trinity College Dublin.

⁵⁰ See on the ombudsman website: <http://www.ombudsman.gov.ie/en/about-us/legislation/ombudsman-amendment-act-2012/bodies-under-remit-from-may-2013/>

⁵¹ Section 25, § 1 of the *Disability Act* which reads: “a public body shall ensure that its public buildings are, as far as practicable, accessible to persons with disabilities”.

⁵² Part M (M1) of the *Building Regulations 1997*, referred to by section 25, § 1 of the *Disability Act*.

⁵³ *Idem*, Part M (M2): “If sanitary conveniences are provided in a building reasonable provision shall be made for disabled people”.

⁵⁴ Section 25, § 3, (a) of the *Disability Act*.

⁵⁵ Section 25, § 4 of the *Disability Act*.

⁵⁶ Defined by Section 2 of the *Disability Act* as “a service or facility of any kind provided by a public body which is available to or accessible by the public generally or a section of the public”.

⁵⁷ Section 25, § 1, (a) of the *Disability Act*.

⁵⁸ *Code of practice*, mentioned above, note 48, p. 10.

⁵⁹ *Idem*, p. 12.

B. Inaccessibility as a form of discrimination/lack of reasonable accommodation

13. Inaccessibility is identified as a form of discrimination or lack of reasonable accommodation in several States Parties. As the following developments will highlight, these legal concepts are useful for situations such as when an education provider decides not to provide for the adjustment or whereby it performs an act inconsistent with doing it⁶⁰.

1) Inaccessibility as a form of discrimination

14. Under **UK Law**, failure to comply with the duty to make reasonable adjustments amounts to unlawful discrimination⁶¹. The same applies under **Norwegian Law** for the breach of the concept of “universal design”⁶².

15. Under the **Bulgarian Protection against Discrimination Act** (2003), the maintenance of an architectural environment hindering the access of persons with disabilities to public places constitutes discrimination⁶³.

2) Inaccessibility as a form of failure to provide reasonable accommodation

16. In other States Parties, “reasonable accommodation” is the concept used to tackle the above mentioned situations.

17. The **Irish Equal Act Status** requires from both public and private service providers to reasonably accommodate⁶⁴ persons with disabilities. It is clear that all Higher education institutions, supported or not by public funds, fall under the remit of “providers of a service”⁶⁵. Pursuant to Section 4 of this Act, “[F]or the purposes of this Act discrimination includes a refusal or failure by the provider of a service to do all that is reasonable to accommodate the needs of a person with a disability by providing special treatment or facilities, if without such special treatment or facilities it would be impossible or unduly difficult for the person to avail himself or herself of the service”⁶⁶. The refusal of a College student having dyslexia by a language course director to participate because she “would suffer a sense of failure, humiliation and lack of self-esteem” was found to be a failure to provide reasonable accommodation⁶⁷.

18. Under the **French legal system**, judicial practice evidences that inaccessibility by an *establishment open to the public* can also amount to discrimination. A case before the Council of State (*Conseil d’Etat*) dealt with the lack of accessibility to Courts’ premises experienced by a wheelchair user and

⁶⁰ The UK *Equality Act* also adds the situation where the adjustment has not been made after the expiration of the period in which it might reasonably have been expected to do, see [Section 118](#), § 6, (b) and § 7 (a) and (b).

⁶¹ [Section 21, § 2](#) in conjunction with [Section 20](#) of the Equality Act 2010.

⁶² *Anti-Discrimination and Accessibility Act on Prohibition against discrimination on the basis of disability* (reference above at note 22), § 9.

⁶³ Art. 5 of *Protection Against Discrimination Act*, available (in Bulgarian) at: <http://lex.bg/bg/laws/ldoc/2135472223>

⁶⁴ Again, cost is a relevant factor in assessing “reasonableness”, see [Section 4, § 2, Equal Status Act](#), full text available at: <http://www.irishstatutebook.ie/pdf/2000/en.act.2000.0008.pdf>

⁶⁵ See [Section 4](#), § 6, (e) in conjunction with [Section 7, § 1](#) of the *Equal Status Act*.

⁶⁶ [Section 4](#), § 1, *Equal Status Act*.

⁶⁷ Equality Tribunal, 26 May 2010, *A Complainant And An Irish Language College*, DEC-S2010-027.

lawyer by profession. It relied on the concept of reasonable accommodation enshrined in the EU Directive 2000/78⁶⁸ to hold that the State was not liable on the grounds of fault (*Responsabilité pour faute*) because of discrimination. Two main reasons are found to support this finding. Firstly, the Council of State takes into account the realisation of specific operations to make accessible several tribunals located in the Courts' jurisdiction where the lawyer was registered and where her office was located. By the same token, it holds that administrative Courts must in such litigations judicially review whether the State has failed to make buildings progressively accessible⁶⁹. Secondly, it also highlights that reactive accommodations have been provided. The relocation of the hearing rooms is an example. By 2015, the liability for fault will be retained for such cases⁷⁰.

19. The **Maltese Equal Opportunities (Persons with Disability) Act** prohibits exclusion of persons with disabilities in the sector of provision of services subject to the “reasonableness” test. Pursuant to its Section 13 no one shall “*on the grounds of disability, be excluded from participation in or be denied the benefits of the programmes or activities of any person or body in relation to the goods, facilities or services to which this article applies or be discriminated against by any person or body providing such goods, facilities or services which the qualified person seeks to obtain or use*”⁷¹. This provision applies, *inter alia*, to facilities for education⁷². Removing architectural barriers is an available measure ensuring compliance with this provision⁷³. Interestingly, the “National Commission Persons with Disability”, Body appointed by Law to identify the needs of persons with disabilities⁷⁴, highlights that educational establishments (including Universities) cannot “*offer an inferior level of education, for example, to prevent your following lessons in a laboratory, because it is physically inaccessible*”⁷⁵. This reminds again of Mr Ghergina’s situation.

C. Concrete steps on the ground to implement accessibility

20. Access to education for persons with disabilities requires effective steps taken by the concerned institutions (Universities) in order to implement their duties. Good practice examples are three-fold.

⁶⁸ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, *OJ, L 303*, 2nd December 2000, p. 16 (binding all EU Member States including Romania). The Council of State found the directive applicable based on its scope determined in its art. 3.

⁶⁹ The Administrative Court of Appeal had not done such a review in that case and is therefore quashed in this respect.

⁷⁰ See French Senate report, « L'accessibilité aux personnes handicapées des établissements recevant du public, des transports et de la voirie : consolider, sécuriser, simplifier », n°454, 15th April 2014, available at: <http://www.senat.fr/rap/r13-454/r13-4541.pdf>, p. 14.

⁷¹ Section 13, (1) of the *Equal Opportunities (Persons with Disability) Act*, Cap 413, 2000, as amended available at: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8879&l=1>

⁷² *Idem*, Section 13, § 2, (e)

⁷³ *Idem*, Section 13, § 3.

⁷⁴ *Idem*, Section 22, (c)

⁷⁵ See National Commission Persons with Disability, “The Equal Opportunities persons with Disabilities Act”, 2009, p. 9, available at: http://www.knpd.org/pubs/pdf/loi_bklt_e.pdf

1) *Involvement of University Governing authorities in the implementation process*

21. **French authorities** have given an important role to the body responsible in the first place for implementing legal rules within the University premises: the University President. He/she has to ensure the accessibility to teachings rooms and buildings for persons with disabilities (e.g. students and staff)⁷⁶.

22. Similarly, the **Irish Universities Act** obliges the University Governing authority to ask the chief officer to prepare a statement of the policies of the University regarding access to University and University education for persons with disabilities. If approved by the Governing authority, the statement must be implemented⁷⁷.

2) *Existence of support structure to students with disabilities at University*

23. In **France**, the *Charte Université/Handicap*⁷⁸ (“The Charter”), agreed upon between the Conference of Universities’ Presidents and several Ministers⁷⁹, foresees the creation of a support structure for students with disabilities in each University. It must be located in a well-identified place and allocated a specific budget line⁸⁰. Its roles comprise the supervision of students with disabilities all year long and the coordination with several University services (e.g. teaching teams and examination service)⁸¹. An overview of accessibility in French Universities is given through an interactive map available on the website of the Minister of Higher Education and Research⁸². The level of accessibility and the contact details of the responsible person are easily found by clicking on the relevant region and University. Interestingly the state of accessibility is presented as a concern for University premises (implying where teachings are provided), but also for closely connected contexts to the provision of education in the strict sense; transport to University, student’s life (University canteen, sport and associative activities etc.) or library⁸³. The great level of detail shows a commitment to transparency. Indeed, information is made public on (i) how accessible the environment is, (ii) improvements made and (iii) what still must be improved⁸⁴. Further, it easily gives relevant information on a centralised database. Also, individual Universities’ webpage are also very helpful in this respect⁸⁵.

⁷⁶ Article L. 712-2, 9°, *Code of education*.

⁷⁷ Section 36, *Universities Act*, 1997, available at: <http://www.irishstatutebook.ie/1997/en/act/pub/0024/>

⁷⁸ *Charte Universités/Handicap*, available at: <http://media.education.gouv.fr/file/66/8/20668.pdf>

⁷⁹ The Minister of Higher Education and Research, Minister of Labour, social relations and solidarities.

⁸⁰ Art. 2, *Charte Universités/Handicap*.

⁸¹ *Ibid.*

⁸² « Carte des établissements publics de l'Enseignement supérieur et de la Recherche », available at:

<http://www.handi-u.fr/pid24128/carte-des-etablissements.html>

⁸³ For each University, information is given on nine subjects, with a special focus on accessibility, e.g. for “Library”, “Transport”, “Adapted education”, “Study support”, “Student life”.

⁸⁴ See for example, University of Rouen identifying the lack of physical accessibility for one building of one Faculty (*Faculté des Lettres*), requiring “room management” (relocating classes), see at: <http://www.handi-u.fr/cid52060/universite-de-rouen.html>

⁸⁵ See for example for [Aix-Marseille](#), [Bordeaux](#), [Lille](#) (Catholic University), [Paris I](#), [Paris II](#), [Strasbourg](#)...

24. In the **UK**, both Universities and Colleges have specific Officers for Disability. Their contact details can easily be found on the Internet for students' convenience⁸⁶. The same applies for **Irish Universities**⁸⁷ who must have an Access Officer⁸⁸.

3) *Issuance of Guidance documents/ awareness raising measures*

25. In **France**, the *Conférence* has issued several Guide documents. One of them dated 2007 lists the steps University Presidents should take to fulfil their legal duties⁸⁹. Emphasis is put, *inter alia*, on providing all dimensions of accessibility (to the built environment, information, knowledge, student's life, etc.) and being sure that the support structure to students with disabilities has the necessary means (including the financial ones) to perform its tasks. Moreover, the *Code of Education* foresees a specific training for teachers and staff on welcoming and educating pupils and students with disabilities⁹⁰. Accordingly, the *Conférence* has issued a Guide document addressed to University staff (2012)⁹¹.

26. In the **UK**, a specific detailed Guidance document has been set out by the Equality and Human rights Commission on the implementation of the *Equality Act* in the sector of Further and Higher Education⁹². Also, the Equality Challenge Unit⁹³ has issued a specific Guidance document to raise awareness and understanding among academic staff of their responsibilities towards students with disabilities⁹⁴. Numerous examples are provided in both documents to understand how the duty to make adjustments must be interpreted.

27. In **Ireland**, the National Disability Authority has prepared and submitted a Code of Practice on "Accessibility of Public Services and Information provided by Public Bodies" under the request of the Minister for Justice, Equality and Law Reform⁹⁵.

⁸⁶ See for example, a centralised database here where it can be researched by postcode of University or College: <http://www.dsa-gag.org.uk/Find-a-Disability-Officer/find-your-disability-officer.html>. Universities also provide information on their own website (e.g. [Cambridge](#), [Durham](#), [Nottingham](#), [Leeds](#)...)

⁸⁷ See e.g. [National University of Galway](#), [University of Limerick](#), [University College Dublin](#), [Trinity College Dublin](#)

⁸⁸ Pursuant to [Section 26, § 2](#) of the *Disability Act*, each public body must have at least one officer authorised to act as 'access officer' responsible for providing or arranging for and co-ordinating help and guidance to people with disabilities so that they can access services.

⁸⁹ *Conférence des Présidents d'Université*, « Guide de l'accueil de l'étudiant handicapé à l'Université », 2007, see: http://www.cpu.fr/wp-content/uploads/2007/12/Guide_Handicap.pdf

⁹⁰ Art. [L.112-5](#), *Code of Education*.

⁹¹ *Conférence des Présidents d'Université*, « Guide de l'accompagnement de l'étudiant handicapé à l'université », 2012, see: <http://www.cpu.fr/wp-content/uploads/2013/11/Guide-handicap-web2.pdf>

⁹² Technical Guidance on Further and Higher Education, mentioned above, note 11.

⁹³ Equality Challenge Unit is a registered charity supported financially by the UK higher education funding bodies and the sector's representative bodies including Higher Education Funding Council for England and for Wales, Scottish Funding Council and Department for Employment and Learning (Northern Ireland), see at: <http://www.ecu.ac.uk/about-us/governance/>

⁹⁴ Equality Challenge Unit, "Disability Legislation: Practical Guidance for academic staff", 2006, see: <http://www.ecu.ac.uk/publications/disability-legislation-practical-guidance-for-academic-staff-revised/>

⁹⁵ See [Section 30, § 1](#), *Disability Act*. For full reference on this Code, see above, note 48.

II. Legal Remedies for Failure to Provide Accessibility

28. This part highlights available legal remedies allowing efficient justiciability of duties analysed above (**Part I**). Hence, concrete (**A**) extra-judicial and (**B**) judicial examples are found in several States Parties. Some cases do not specifically concern the education sector but are relevant because the duty to provide accessibility is imposed on (i) the sector of “provision of services” which includes, under the concerned legal systems, the provision of education or/and (ii) a general category of institutions to which the University belongs.

A. Outside courts settlement on changes to the built environment

29. In **Austria**, a University has itself acknowledged that the accumulation of inaccessible premises (e.g. classrooms) and lack of initiative to relocate activities taking place herein as a direct discrimination⁹⁶. To solve the matter, it agreed on installing a lift (within a specific period) and relocating the activities during the time required for the installation⁹⁷.

30. **Irish Practice** is also relevant. Relocating a police station to a fully accessible building⁹⁸ or installing a lift in a shop whose main section was not accessible to wheelchair-users are some examples of agreed accommodations upon Equal Authority requests⁹⁹. Particularly noteworthy for our purpose is the commitment of a cinema to set aside an area of its VIP section for wheelchair-users so that they would not have to watch the film in **isolation** from their friends sitting in there¹⁰⁰.

31. **Maltese Practice** acknowledges similar experience in the sector of provision of services¹⁰¹.

B. Judicially ordered changes of the built environment

32. The negotiation process is not always satisfying. Therefore Courts must be given efficient means for ensuring the elimination of barriers persons with disabilities face.

33. Under **UK Law**, remedies include notably mandatory orders and injunctions imposed by independent Courts. In England, Northern Ireland and Wales, County Courts have the power to award all the remedies which the High court can grant in proceedings in tort or in a claim for judicial review¹⁰². In Scotland, Sheriff Courts have the power to make any order which could be made by the Court of Session in proceedings for reparation or petition for judicial review¹⁰³. In this vein, injunction to make a building

⁹⁶ See on the website of the association *Bizeps*: <http://www.bizeps.or.at/gleichstellung/schlichtungen/index.php?nr=161>

⁹⁷ See on the same website at: <http://www.bizeps.or.at/gleichstellung/schlichtungen/index.php?nr=158>

⁹⁸ Equality Authority Annual Report, 2007, *Claimant v A Garda station*, report available at: <http://www.equality.ie/Files/Annual%20Report%202007.pdf>, p. 33.

⁹⁹ Equality Authority Annual Report, 2006, *Tallon v Lifestyle Sports*, section “Reasonable accommodation for wheelchair users”, available at: <http://www.equality.ie/Files/Annual%20Report%202006.pdf>.

¹⁰⁰ *Ibid*, *Mr X v Dundrum Cinema*.

¹⁰¹ Numerous places (like shops, Hotels, sports complex, restaurants, and police stations) have been made accessible upon request of the *National Commission Persons with Disability*, see its reports for year 2011/2012, p. 8-10 and for 2012/2013, p. 9-10. Both reports are available at: <http://www.knpd.org/legislation/eoa.html>

¹⁰² See **Section 119**, § 2 of the *Equality Act 2010*.

¹⁰³ *Idem*, **Section 119**, § 3.

accessible is an available remedy. In case *Royal Bank of Scotland v Allen*¹⁰⁴, a Bank was found to be in breach of the duty to make reasonable adjustments (On this concept, see above **Part I, (A), 1**) by Sheffield County in a judgment upheld by the Court of Appeal. As its main branch was inaccessible to wheel-chair users; the bank offered alternatives it asserted to be reasonable to one of its clients, a wheelchair user. Thus, internet banking, telephone banking, the use of branches elsewhere in the city were the proposed alternatives. But the inaccessible service (provision of face-to-face banking facilities) was found to be separate and distinct from these alternatives. Specific reference is made to the bank's failure to consider whether or not the installation of a lift was feasible to support the Court's finding that it failed to make a reasonable adjustment.

34. **Irish** litigation practice also evidences efficient remedies against lack of accessibility. In addition to awarding compensation, Courts can order someone in breach of the *Equal Status Act*¹⁰⁵ to take specific actions (“*take a course of action which is so specified*”). First, they can order the removal of barriers. In a case concerning a Pub, the Judge ordered to provide wheelchair-accessible toilets in accordance with Part M of the *Building Regulations* (see above **Part I, (A), 2**) within a certain timeframe¹⁰⁶. The same outcome occurred in a case concerning a Hotel who was not allowed to serve its Bar until adequate toilets would have been installed¹⁰⁷. Second, Courts can also order remedies aimed at changing one's practice in order to prevent bad practice from happening in the future. In the case on the refusal of a student with dyslexia to participate in a course (see above **Part I, (B), 2**), the Court ordered the College to “*review its procedures and policies for admission of applicants to its courses with a view to ensuring that these procedures are fully compliant with its obligations under the Equal Status Acts*”.

35. Similarly and since several decisions dated 2008 of the Supreme Court in civil matters, **Bulgarian Courts** can order the elimination of barriers¹⁰⁸. In one of these cases, the *Court of cassation* ordered a City municipality to cease the discrimination against persons with disabilities by removing architectural barriers to accessibility found at post offices, theater, cinema, library etc.¹⁰⁹. What is more, the Equality Body instructed the Minister of Justice to reorganise the building of the Sofia District Court on the grounds that inaccessibility constituted discrimination¹¹⁰. Also, other tools are available to give this practice an effective justiciability. In a similar situation, the Equality Body instructed the Minister of Finance and municipality mayors to budget the necessary financial means to eliminate the barriers¹¹¹.

¹⁰⁴ [2009] EWCA Civ 1213, available at <http://www.bailii.org/ew/cases/EWCA/Civ/2009/1213.html>

¹⁰⁵ See *Section 27, § 1, (b)* of the *Equal Status Act*.

¹⁰⁶ See the press release: <http://www.equality.ie/en/Press-Office/Radio-Presenter-Wins-Disability-Case-Against-Pub.html>

¹⁰⁷ See Equality Authority Annual Report for 2006, *Hayes v Russell Court Hotel*, report at: <http://www.equality.ie/en/Publications/Annual-Reports/Annual-Report-2006.html>

¹⁰⁸ References are given by the expert for Bulgaria of the European network of legal experts in the non-discrimination field, see “Country report on measures to combat discrimination” of 2012 at: <http://www.non-discrimination.net/countries/bulgaria>, p. 36, note 114.

¹⁰⁹ *Idem*, Decision N 589 in civil case N 1728/2007.

¹¹⁰ *Idem*, Equality Body, Decision N 39 of 25 February 2008.

¹¹¹ *Idem*, Equality Body, Decision N 60 of 08 April 2008.

36. The same applies for **Maltese Courts**. As an example, a Court ordered a University to install within two months a platform lift to access the two-floor Student House¹¹².

37. **Norwegian Courts** can ensure the efficient implementation of “universal design”¹¹³. As an example, an Equality Tribunal ordered the local public transport company of Oslo to mark in contrasting colours its stairways and steps in order to assist persons with a visual impairment within 11 months¹¹⁴.

¹¹² Report of the Maltese *National Commission Persons with Disability* on the application of the Equality Opportunities (Persons with Disability) Act 2000, for year 2004-2005, p. 19, available at: <http://www.knpd.org/pubs/pdf/eoarp05e.pdf>

¹¹³ See for more detail on this concept, note 21 and 22 above.

¹¹⁴ Equality Tribunal, 5th February 2014 available (in Norwegian) at: <http://www.diskrimineringsnemnda.no/sites/d/diskrimineringsnemnda.no/files/7aa321b609ef01f6a4fc4c537580e3bf.pdf>